

EVANGELOS DIMITRIOS SOUKAS,)	CASE NO.: C11-1356-RAJ-JPD
)	
Petitioner,)	
)	
vs.)	REPORT AND RECOMMENDATION
)	
MARION FEATHER,)	
)	
Respondent.)	
)	

Petitioner Evangelos Dimitrios Soukas, proceeding *pro se* and *in forma pauperis*, petitions for 28 U.S.C. § 2241 habeas relief and moves for appointment of counsel. Mr. Soukas contends that the Bureau of Prisons (“BOP”) violated his right to due process in a July 2011 administrative hearing that resulted in his release date being moved from August 11, 2011 to November 26, 2011. The Court recommends DENYING Mr. Soukas’s § 2241 habeas petition without prejudice for failure to exhaust administrative remedies and DENYING his motion to appoint counsel.

In 2005, Mr. Soukas pleaded guilty to federal crimes and was sentenced to 92 months of imprisonment and three years of supervised release. (Habeas Petition, at 1–2.) Mr. Soukas

1 states that he was granted a one year Residential Drug Abuse Program (“RDAP”) reduction in
2 his sentence, was placed in Pioneer Fellowship House on April 14, 2011, and his scheduled
3 release date was August 11, 2011. (*Id.* at 3.) He alleges that on July 1, 2011, he was confronted
4 with having violated the conditions of his confinement. (*Id.* at 4–7.) According to Mr. Soukas,
5 at an administrative hearing on July 11, 2011, he was found guilty of BOP infractions related to
6 “deviating, porn, [P]lay[P]al, and uploads of porn to the [I]nternet.” (*Id.* at 7.)

7 This Court is the proper venue for this action because Mr. Soukas is currently confined at
8 the Federal Detention Center - SeaTac, which is located within the Western District of
9 Washington. *See* 28 U.S.C. § 2241(a).

10 DISCUSSION

11 Mr. Soukas contends that his right to due process was violated because he never received
12 proper notice of the charges against him and he was treated improperly during the administrative
13 hearing. (*Id.* at 12–15.) He alleges that any attempt to exhaust administrative remedies would be
14 futile because his original release date of August 11, 2011, has already passed. (*Id.* at 15–16.)
15 He moves for appointment of counsel because of the time-sensitive nature of his claims, and
16 because he generally lacks legal knowledge. (Motion for Appt. of Counsel, at 1–2.)

17 The Court recommends dismissing Mr. Soukas’s § 2241 petition without prejudice for
18 failure to exhaust administrative remedies. Mr. Soukas’s pleadings and attachments show that he
19 has declined to avail himself of existing, administrative remedies and his allegations fail to
20 demonstrate that doing so would be futile. The Court also recommends denying his motion for
21 appointment of counsel.

22 I. Administrative Exhaustion

23 Mr. Soukas properly brought this matter as a § 2241 habeas petition that challenges the
24 manner and conditions of the execution of his sentence. *See Hernandez v. Campbell*, 204 F.3d
25 861, 864 (9th Cir. 2000). Nevertheless, before petitioning for habeas relief, federal prisoners are
26 required to exhaust their administrative remedies through the BOP. *Fraley v. U.S. Bureau of*

1 *Prisons*, 1 F.3d 924, 925 (9th Cir. 1993); *Tucker v. Carlson*, 925 F.2d 330, 332 (9th Cir. 1991);
2 *Martinez v. Roberts*, 804 F.2d 570, 571 (9th Cir. 1986). A federal prisoner need not exhaust
3 administrative remedies if pursuing those remedies would be futile. *Fraley*, 1 F.3d at 925.

4 The Court finds that Mr. Soukas has failed to exhaust his administrative remedies through
5 the BOP. At 7:09 pm on August 9, 2011, Mr. Soukas e-mailed facility staff to ask for
6 clarification about the violations, and to request a copy of the incident report. (Habeas Petition,
7 at 20.) At 8:37am on August 10, 2011, the Unit Manager responded: “You were found guilty of
8 a 205 and a 309. You will get a copy when I get the copy. Right now I can’t access inmate
9 accounts, the system might be down.” (*Id.*) On August 11, 2011, Mr. Soukas e-mailed the Unit
10 Manager again, stating that he needed the incident report so that he could legally appeal to the
11 regional office and file in federal court. (*Id.* at 19.) Hours later, the Unit Manager responded: “I
12 can’t give you what I don’t have. The CCM’s office has assured me they will forward it to me
13 the minute they get it. Your time to appeal does not start until you actually get the report.”
14 According to the extant record, Mr. Soukas never appealed administratively. Instead, on August
15 8, 2011, he completed an *in forma pauperis* application for the federal action (Dkt.1, at 2); on
16 August 15, 2011, he signed his § 2241 petition (Habeas Petition, at 17); and on August 16, 2011,
17 the matter was filed in federal court. Although Mr. Soukas alleges that it would be futile to seek
18 administrative relief, nothing in the record supports this allegation.

19 **II. Motion for Appointment of Counsel**

20 The district court has the discretion to appoint counsel in habeas matters. *See Chaney v.*
21 *Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986). The district court must appoint counsel when the
22 case is so complex that the lack of counsel would result in the denial of due process. *See Brown*
23 *v. United States*, 623 F.2d 54, 61 (9th Cir. 1980) (citing *Dillon v. United States*, 307 F.2d 445,
24 446–47 (9th Cir. 1962)). The Court may also consider whether the interests of justice otherwise
25 require the appointment of counsel. *See Terrovona v. Kincheloe*, 912 F.2d 1176, 1181 (9th Cir.
26 1990) (quoting 18 U.S.C. § 3006A(a)(2)(B)). This determination is guided by an assessment of


1 petitioner's ability to articulate his claim, the complexity of the legal issues, and the likelihood of
2 success on the merits. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (per curiam).

3 The Court finds that Mr. Soukas should not be afforded appointed counsel for his present
4 § 2241 petition. Mr. Soukas declined to administratively appeal; instead he rushed to federal
5 court with detailed factual allegations. He has thus shown great facility in articulating a
6 straightforward due-process claim that should not be examined until he has administratively
7 exhausted his remedies.

8 CONCLUSION

9 The Court recommends DENYING Mr. Soukas's § 2241 habeas petition without
10 prejudice for failure to exhaust administrative remedies and DENYING his motion to appoint
11 counsel. A proposed order is attached.

12 DATED this 25th day of August, 2011.

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14 JAMES P. DONOHUE
15 United States Magistrate Judge
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